

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WAYNE ELLIOT,

Plaintiff,

-against-

THE CITY OF NEW YORK, BRENDAN NOLAN, Shield
No. 1920, Individually and in his Official Capacity, and
P.O.s "JOHN DOE" #1-10, Individually and in their
Official Capacities, (the name "John Doe" being fictitious,
as the true names are presently unknown)

Defendants.
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ANSWER

Jury Trial Demanded

07 Civ. 10701 (GBD)

The City of New York by its attorney, Michael A. Cardozo, Corporation Counsel
of the City of New York, for its answer to the complaint, respectfully alleges, upon information
and belief, as follows:

1. Denies the allegations set forth in paragraph "1" of the complaint, except
admits plaintiff purports to proceed as stated therein.
2. Denies the allegations set forth in paragraph "2" of the complaint, except
admits plaintiff purports to proceed as stated therein.
3. Denies the allegations set forth in paragraph "3" of the complaint, except
admits plaintiff purports to invoke the jurisdiction of the Court as stated therein.
4. Denies the allegations set forth in paragraph "4" of the complaint, except
admits plaintiff purports to base venue as stated therein.
5. Paragraph "5" contains no averments of fact to which a response is
required.

6. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "6" of the complaint, except admits plaintiff is an African-American male.

7. Admits the allegations set forth in paragraph "7" of the complaint.

8. Defendant states that the allegations in paragraph "8" of the complaint constitute legal conclusions to which no response is required, except defendant respectfully refers the Court to the New York City Charter and the Administrative Code for a recitation of the relationship between defendant City of New York and the New York City Police Department.

9. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "9" of the complaint, except admits Brendan Nolan was and is a New York City police officer.

10. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "10" of the complaint.

11. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "11" of the complaint.

12. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "12" of the complaint.

13. Denies the allegations set forth in paragraph "13" of the complaint.

14. Denies the allegations set forth in paragraph "14" of the complaint.

15. Denies the allegations set forth in paragraph "15" of the complaint.

16. Denies the allegations set forth in paragraph "16" of the complaint.

17. Denies the allegations set forth in paragraph "17" of the complaint.

18. Denies the allegations set forth in paragraph "18" of the complaint.

19. Denies the allegations set forth in paragraph "19" of the complaint.
20. Denies the allegations set forth in paragraph "20" of the complaint.
21. Denies the allegations set forth in paragraph "21" of the complaint.
22. Denies the allegations set forth in paragraph "22" of the complaint.
23. Denies the allegations set forth in paragraph "23" of the complaint.
24. Denies the allegations set forth in paragraph "24" of the complaint.
25. Denies the allegations set forth in paragraph "25" of the complaint.
26. Denies the allegations set forth in paragraph "26" of the complaint.
27. Denies the allegations set forth in paragraph "27" of the complaint.
28. Denies the allegations set forth in paragraph "28" of the complaint.
29. Denies the allegations set forth in paragraph "29" of the complaint.
30. Denies the allegations set forth in paragraph "30" of the complaint.
31. Denies the allegations set forth in paragraph "32" of the complaint.
32. Denies the allegations set forth in paragraph "33" of the complaint.
33. Denies the allegations set forth in paragraph "34" of the complaint.
34. Denies the allegations set forth in paragraph "35" of the complaint.
35. Denies the allegations set forth in paragraph "36" of the complaint.
36. Denies the allegations set forth in paragraph "37" of the complaint.
37. Denies the allegations set forth in paragraph "38" of the complaint.
38. Denies the allegations set forth in paragraph "39" of the complaint.
39. Denies the allegations set forth in paragraph "40" of the complaint.
40. Denies knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "41" of the complaint.

41. Denies the allegations set forth in paragraph "42" of the complaint, except admits the New York City Police Department, IAB conducted an investigation related to an incident involving plaintiff with Case #C06-0638.

42. Denies the allegations set forth in paragraph "43" of the complaint, except admits the section in quotation marks is accurately quoted.

43. Denies the allegations set forth in paragraph "44" of the complaint.

44. In response to the allegations set forth in paragraph "45" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1" through "44" inclusive of this answer, as if fully set forth herein.

45. Denies the allegations set forth in paragraph "46" of the complaint.

46. Denies the allegations set forth in paragraph "47" of the complaint.

47. Denies the allegations set forth in paragraph "48" of the complaint.

48. Denies the allegations set forth in paragraph "49" of the complaint.

49. Denies the allegations set forth in paragraph "50" of the complaint.

50. Denies the allegations set forth in paragraph "51" of the complaint, including all subparts.

51. In response to the allegations set forth in paragraph "52" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1" through "50" inclusive of this answer, as if fully set forth herein.

52. Denies the allegations set forth in paragraph "53" of the complaint.

53. Denies the allegations set forth in paragraph "54" of the complaint.

54. In response to the allegations set forth in paragraph "55" of the complaint, defendant repeats and realleges the responses set forth in paragraphs "1" through "53" inclusive of this answer, as if fully set forth herein.

55. Denies the allegations set forth in paragraph "56" of the complaint.

56. Denies the allegations set forth in paragraph "57" of the complaint.

57. In response to the allegations set forth in paragraph "58" of the complaint, defendants repeats and realleges the responses set forth in paragraphs "1" through "56" inclusive of this answer, as is fully set forth herein.

58. Denies the allegations set forth in paragraph "59" of the complaint.

59. Denies the allegations set forth in paragraph "60" of the complaint.

60. Denies the allegations set forth in paragraph "61" of the complaint.

61. In response to the allegations set forth in paragraph "62" of the complaint, defendants repeats and realleges the responses set forth in paragraphs "1" through "60" inclusive of this answer, as is fully set forth herein.

62. Denies the allegations set forth in paragraph "63" of the complaint.

63. Denies the allegations set forth in paragraph "64" of the complaint.

64. Denies the allegations set forth in paragraph "65" of the complaint.

65. Denies the allegations set forth in paragraph "66" of the complaint.

66. Denies the allegations set forth in paragraph "67" of the complaint.

67. Denies the allegations set forth in paragraph "68" of the complaint.

68. Denies the allegations set forth in paragraph "69" of the complaint.

69. Denies the allegations set forth in paragraph "70" of the complaint.

70. Denies the allegations set forth in paragraph "71" of the complaint.

71. Denies the allegations set forth in paragraph "72" of the complaint.

72. Denies the allegations set forth in paragraph "73" of the complaint.

73. Denies the allegations set forth in paragraph "74" of the complaint.

74. Denies the allegations set forth in paragraph "75" of the complaint.

75. Denies the allegations set forth in paragraph "76" of the complaint.

76. Denies the allegations set forth in paragraph "77" of the complaint.

77. In response to the allegations set forth in paragraph "78" of the complaint, defendants repeats and realleges the responses set forth in paragraphs "1" through "76" inclusive of this answer, as is fully set forth herein.

78. Denies the allegations set forth in paragraph "79" of the complaint.

79. Denies the allegations set forth in paragraph "80" of the complaint.

80. Denies the allegations set forth in paragraph "81" of the complaint.

81. Denies the allegations set forth in paragraph "82" of the complaint.

82. In response to the allegations set forth in paragraph "83" of the complaint, defendants repeats and realleges the responses set forth in paragraphs "1" through "81" inclusive of this answer, as is fully set forth herein.

83. Denies the allegations set forth in paragraph "84" of the complaint.

84. Denies the allegations set forth in paragraph "85" of the complaint.

85. Denies the allegations set forth in paragraph "86" of the complaint.

86. Denies the allegations set forth in paragraph "87" of the complaint.

87. In response to the allegations set forth in paragraph "88" of the complaint, defendants repeats and realleges the responses set forth in paragraphs "1" through "86" inclusive of this answer, as is fully set forth herein.

88. Denies the allegations set forth in paragraph "89" of the complaint.

89. Denies the allegations set forth in paragraph "90" of the complaint.

90. Denies the allegations set forth in paragraph "91" of the complaint.

91. Denies the allegations set forth in paragraph "92" of the complaint.

92. Denies the allegations set forth in paragraph "93" of the complaint,
including all subparts.

93. Denies the allegations set forth in paragraph "94" of the complaint.

94. Denies the allegations set forth in paragraph "95" of the complaint.

95. Denies the allegations set forth in paragraph "96" of the complaint.

96. Denies the allegations set forth in paragraph "97" of the complaint.

97. Denies the allegations set forth in paragraph "98" of the complaint.

98. Denies the allegations set forth in paragraph "99" of the complaint.

99. Denies the allegations set forth in paragraph "100" of the complaint,
including all subparts.

100. Denies the allegations set forth in paragraph "101" of the complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE:

101. The complaint fails to state a claim upon which relief can be granted.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE:

102. Defendant has not violated any rights, privileges or immunities under the
Constitution or laws of the United States or the State of New York or any political subdivision
thereof.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE:

103. At all times relevant to the acts alleged in the complaint, defendant City of New York acted reasonably in the proper and lawful exercise of its discretion; therefore, it is entitled to state law governmental immunity.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE:

104. Any injury alleged to have been sustained resulted from plaintiff's own culpable or negligent conduct and was not the proximate result of any act of the defendant.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE:

105. Plaintiff has failed, in whole or in part, to comply with New York General Municipal Law § 50-e.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE:

106. There was probable cause for plaintiff's arrest, detention and prosecution.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE:

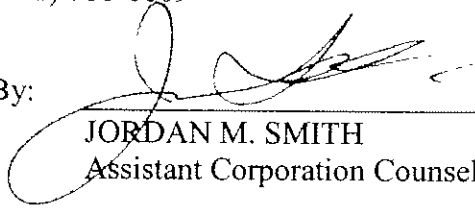
107. Plaintiff's false arrest, malicious prosecution and abuse of process claims are barred by his conviction.

WHEREFORE, defendant City of New York requests judgment dismissing the complaint in its entirety, together with the costs and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
February 19, 2008

MICHAEL A. CARDOZO
Corporation Counsel of the
City of New York
Attorney for Defendant City of New York
100 Church Street, Room 3-141
New York, New York 10007
(212) 788-0869

By:



JORDAN M. SMITH
Assistant Corporation Counsel

To: Jon L. Norinsberg, Esq. (by ECF)
225 Broadway, Suite 2700
New York, NY 10007